Minister of Labour, Malaysia v Chan Meng Yuen and another appeal

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 01-3-1991 AND 02-44-1991
HARUN HASHIM, MOHAMED YUSOFF SCJJ AND ANUAR J
24 JULY 1992

Administrative Law *— Duty to give reasons — Discretion — Minister deciding not to refer representations of employee to Industrial Court — Representations made by employee against retrenchment — Application for certiorari and mandamus — Whether Minister required by law to give reasons for decision — Whether Minister acted unreasonably or in bad faith — Industrial Relations Act 1967 s 20*

Labour Law *— Retrenchment — Representations by employee against retrenchment — No settlement reached — Minister deciding not to refer representations to Industrial Court — Application for certiorari and mandamus — Whether Minister required by law to give reasons for decision — Industrial Relations Act 1967 s 20*

The respondent had been employed by Magnum Corporation Bhd as an accountant and was later promoted to General Manager (4-D Operations). Subsequently he was informed by the company that following a review of the company's management requirements, it was decided that he would be retrenched. The respondent appealed against the retrenchment and the company offered the respondent the position of Manager (Special Functions). This offer was rejected by the respondent. The respondent considered that he had been dismissed without just cause or excuse and accordingly made representations to the Director General of Industrial Relations. Pursuant to a conciliation meeting held by the Director General, the Director General notified the Minister that there was no likelihood of a settlement. The Minister decided not to refer the representations to the Industrial Court. The respondent then applied to the High Court for orders of certiorari and mandamus which were granted. The appellants appealed. The central issue in these appeals was whether the Minister is required by law to give reasons for his decision.

Held, allowing the appeals:

(1) The Minister is not required to give any reasons when he exercises his discretion under s 20(3) of the Industrial Relations Act 1967 not to refer the representations to the Industrial Court.

(2) The respondent must show that the Minister acted unreasonably or that he acted in bad faith. There is no such evidence here. There is only the bare allegation that the Minister had acted unreasonably because he had not given reasons for his decision.

(3) On the facts of this case, the Minister acted reasonably in exercising his discretion not to refer the respondent's representations to the Industrial Court. It cannot be said that the facts point overwhelmingly in favour of a different decision.

[**Bahasa Malaysia summary**

Penentang telah bekerja dengan Magnum Corporation Bhd sebagai akauntan dan kemudiannya telah dinaikkan pangkat menjadi Pengurus Am (Operasi 4-D). Kemudiannya dia telah diberitahu oleh syarikat itu bahawa selepas suatu kajian semula keperluan pengurusan syarikat itu, telah diputuskan bahawa dia akan diberhentikan kerja kerana gerakan pengurangan pekerja. Penentang telah membuat rayuan terhadap pengurangan pekerja itu dan syarikat itu telah menawarkan kepada penentang jawatan Pengurus (Fungsi Khas). Tawaran itu telah ditolak oleh penentang. Penentang berpendapat bahawa beliau telah dibuang kerja tanpa sebab atau alasan yang berpatutan dan oleh kerana itu membuat representasi kepada Ketua Pengarah Perhubungan Perusahaan. Mengikut suatu mesyuarat pendamaian yang diadakan oleh Ketua Pengarah itu, Ketua Pengarah itu telah memberitahu Menteri yang tidak mungkin ada penyelesaian. Menteri kemudiannya memutuskan tidak akan merujuk representasi itu kepada Mahkamah Perusahaan. Penentang telah memohon kepada Mahkamah Tinggi untuk mendapat perintah certiorari dan mandamus yang telah diberi. Perayu telah membuat rayuan. Isu utama di dalam rayuan-rayuan ini ialah sama ada Menteri dikehendaki oleh undang-undang untuk memberi alasan-alasan keputusannya.

Diputuskan, membenarkan rayuan itu:

(1) Menteri tidak dikehendaki memberi sebarang alasan apabila beliau menjalankan budi bicara beliau di bawah s 20(3) Akta Perhubungan Perusahaan 1967 untuk tidak merujuk representasi itu kepada Mahkamah Perusahaan.

(2) Penentang mesti menunjukkan bahawa Menteri telah bertindak dengan tidak wajar atau bahawa beliau telah bertindak dengan niat jahat. Tiada keterangan seperti itu terdapat di sini. Hanya terdapat dakwaan sahaja yang Menteri telah bertindak dengan tidak wajar kerana beliau tidak memberi alasan keputusannya.

(3) Pada fakta-fakta di dalam des ini, Menteri telah bertindak dengan wajar dalam menggunakan budi bicara beliau untuk tidak merujuk representasi penentang ke Mahkamah Perusahaan. Tidak boleh dikatakan bahawa fakta-fakta itu menunjukkan dengan kemungkinan yang amat sangat ke arah keputusan yang lain.]

Cases referred to

1 *Minister of Labour, Malaysia v Sanjiv Oberoi & Anor* [1990] 1 MLJ 112 (folld)

2 *Minister of Labour, Malaysia v National Union Journalists, Malaysia and another appeal* [1991] 1 MLJ 24 (refd)

3 *R v Northumberland Compensation Appeal Tribunal, ex p Shaw* [1952] 1 KB 338; [1952] 1 All ER 122 (refd)

4 *R v Secretary of State for Trade and Industry, ex p Lunrho plc* [1989] 1 WLR 525; [1989] 2 All ER 609 (refd)

5 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 All ER 680; [1948] 1 KB 223 (folld)
6 *Cannock Chase District Council v Kelly* [1978] 1 WLR 1; [1978] 1 All ER 152 (folld)
7 *National Union of Hotel, Bar & Restaurant Workers v Minister of Labour and Manpower* [1980] 2 MLJ 189 (refd)

Legislation referred to
Industrial Relations Act 1967 s 20

Appeal from: Originating Motion No R8–32–158–1988 (High Court, Kuala Lumpur)

Susila S Param (Senior Federal Counsel) for the appellant in Civil Appeal No 01–3–91.

VT Nathan (*Peh Lee Kheng* with him) (*Shearn Delamore & Co*) for the appellant in Civil Appeal No 02–44–91.

B Lobo (*Lobo & Associates*) for the respondent in both appeals.

Cur Adv Vult

Harun Hashim SCJ (delivering the judgment of the court): The respondent in both these appeals was employed by the appellant in Rayuan Sivil 02–44–91 ('Magnum') as an accountant on 1 September 1978. On 1 August 1985 he was promoted to the position of General Manager (4-D Operations) with an increase in monthly salary to $8,000 with effect from 1 January 1986. On 1 April 1987 there was a change of name from Gaming Department to Gaming Division and the respondent was appointed head of that division.

By letter of 24 June 1987, Magnum informed the respondent that following a review of the company's management requirements, it was decided to abolish the position of Head, Gaming Division and that he would be retrenched (with retrenchment benefits) with effect from 1 October 1987. According to Magnum, the function of Head of Gaming Division could be performed by the group general manager, as the latter's duties had since decreased. According to the respondent, however, there was no justification to abolish the position of Head of Gaming Division as the duties of that position had not changed with re-organization and it was also the principal income earner of the company. The respondent appealed against the retrenchment. There were discussions and on 25 September 1989, Magnum offered the respondent the position of Manager (Special Functions). The respondent rejected the offer on the grounds that what was promised him verbally during discussions was not reflected in the written offer.

The respondent considered that he had been dismissed without just cause or excuse and accordingly on 22 October 1987 made representations to the Director General of Industrial Relations under s 20(1) of the Industrial Relations Act 1967 ('the Act'). The Director General held a concilia-

tion meeting on 11 November 1987 and notified to the Minister on 27 August 1988 that there was no likelihood of settlement. On 8 October 1988 the Minister decided not to refer the representations to the Industrial Court. The respondent then applied to the High Court for orders of certiorari and mandamus. The learned judge granted these orders. Hence these appeals before us.

The central issue in these appeals is whether the Minister is required by law to give reasons for his decision. Section 20 of the Act (before its amendment on 10 February 1989 provided:

> (1) Where a workman who is not a member of a trade union of workmen considers that he has been dismissed without just cause or excuse by his employer he may, within thirty days of the dismissal, make representations in writing to the Director General to be reinstated in his former employment, the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.
> (2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly.
> (3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.
> (4) Where an award has been made under subsection (3), the award shall operate as a bar to any action for damages by the workman in any court in respect of wrongful dismissal.

The Minister (appellant in Rayuan Sivil 01–3–1991) contends that he is not required by law to give any reason for his decision. It is an exercise of ministerial discretion in which policy decisions come into play. In refusing to refer the representations to the Industrial Court, he is not deciding on the merits of the dismissal or otherwise. It is a matter of policy that the respondent should not be permitted to use the Industrial Court as the forum to resolve the dispute between him and his employer but if he has a good case he should sue the employer in the civil court in an action for damages for wrongful dismissal. Finally, it is contended that this is not a proper case for the High Court to interfere with the Minister's exercise of discretion.

On the other hand, the respondent contends that the exercise of discretion by the Minister is not unfettered. It was urged upon us that when the decision of the Minister is challenged in the High Court and it is alleged that he has acted unreasonably, the Minister is duty bound to give his reasons. And it is not possible to conclude that the Minister has acted reasonably or otherwise without going into the facts of the case. Finally, it is argued that if the Minister does not give reasons for his decision then he has no good reason in refusing to make the reference to the Industrial Court and therefore has acted unreasonably.

In these appeals it is common ground that the Minister has a discretion under s 20(3) of the Act. In his affidavit, the Minister said:

3 On or about 27 August 1988 and pursuant to s 20(2) of the Industrial Relations Act 1967, the Director General for Industrial Relations notified me that there was no likelihood of a settlement of the representations for reinstatement made by the applicant.

4 I duly considered the said notification which included, inter alia, a report of the steps taken to resolve the applicant's representations for reinstatement.

5 Having considered the matter carefully, I exercised my discretion under s 20(3) of the Industrial Relations Act 1967 and decided that it was not fit to refer the applicant's representations to the Industrial Court. My decision was conveyed to the applicant by letter dated 8 October 1988.

6 I declare that in making the decision stated above, I exercised the discretion invested in me fairly and impartially.

From this affidavit it is clear that the various steps have been complied with up to the stage when the Minister decided not to refer the representations to the Industrial Court. It is equally clear he has not stated his reasons in arriving at that decision. The question is whether he is required by law to do so. This court, in *Minister of Labour, Malaysia v Sanjiv Oberoi & Anor*[1] held:

> The Minister of Labour is not required to give any reasons when he exercises his discretion under s 20(3) of the Industrial Relations Act 1967.

The next question is whether the Minister is required to give his reasons when challenged in certiorari proceedings. During the course of argument, several cases were cited to us but they were all cases where the Minister had given his reasons: see eg *Minister of Labour, Malaysia v National Union of Journalists, Malaysia and another appeal.*[2] What is clear from the decided cases, however, is that the courts cannot compel the Minister to give reasons for his decision where there is no duty to do so: *Minister of Labour, Malaysia v Sanjiv Oberoi & Anor.*[1] Indeed in *R v Northumberland Compensation Appeal Tribunal, ex p Shaw*,[3] Lord Denning at p 352 said:

> I think the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, *nor the reasons*, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and those reasons are wrong in law, certiorari lies to quash the decision. (Emphasis supplied.)

In *R v Secretary of State for Trade and Industry, ex p Lonrho plc*,[4] Lord Keith of Kinkel in the House of Lords said at p 529:

> The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision.

On what facts and circumstances should a judicial review court rely when deciding whether the Minister has exercised his discretion according to law? In like cases as the present, the real contesting parties are the employer and the workman. Both sides have presented their version of the case to the

court which cannot be any different from that laid before the Director General of Industrial Relations and the Minister. That is the only material which the court has to consider. In the present case, there is only the bare allegation that the Minister has acted unreasonably because he has not given reasons for his decision. That is not enough.

The respondent must show that the Minister acted unreasonably: *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*[5] or that he acted in bad faith: *Cannock Chase District Council v Kelly*.[6] There is no such evidence here.

It was urged before us that in exercising his discretion under s 20(3) of the Act, policy decisions come into play and following *National Union of Hotel, Bar & Restaurant Workers v Minister of Labour and Manpower*,[7] the courts should not interfere. In that case the Minister gave his reasons. He has not done so here but it was suggested by the learned senior federal counsel who appeared for the Minister that the policy decision was that as there is an alternative remedy available to the respondent to seek relief in the civil court the Minister has acted reasonably. That may be so but the Minister has not said so and we cannot accept a statement from the Bar as being the reason the Minister had in arriving at his decision. We can only look at the facts as stated in the affidavits before the court.

What then are the facts in this case? Firstly, that the respondent is being *retrenched* from employment on account of the company's review of its management requirements. The company had an overseas subsidiary company (Phicom PLC) which was under the responsibility of the group general manager. That subsidiary company was disposed of in June 1987 resulting in the group general manager having less responsibilities. As the main business activity of the company is the Gaming Division, the board of directors of the company decided that the group general manager should take over direct responsibility of the Gaming Division. It is obvious that one of them had to go, either the group general manager or the respondent. The directors decided on the respondent. Secondly, retrenchment is an accepted eventual it in the private sector. In the instant case, provision was made for such an eventual it in the respondent's terms of employment and an amount of $72,666.67 was payable to the respondent as retrenchment benefits for his nine years service with the company. Thirdly, at his request the respondent was offered re-employment by the company at the same salary with continuity of service from 1978 but he turned it down because the other terms of re-employment were not what had been promised him verbally. The position offered was that of Manager (Special Functions) reporting direct to the group general manager and to 'be given special assignments whenever necessary and where appropriate with the Magnum Group of Companies'. This offer clearly shows that the respondent was indeed redundant to the company's management requirements in respect of his late position and an act of indulgence on the part of the company.

On these facts, we are of the view that the Minister acted reasonably in exercising his discretion not to refer the respondent's representations to the Industrial Court. It certainly cannot be said that the facts point overwhelmingly in favour of a different decision. If the respondent is still aggrieved

from the decision, it is open to him to file a suit in the civil court for damages for wrongful dismissal. This is clearly contemplated by s 20(4) of the Act. It is true that if he succeeds in that court he may not get much (as stated by Mr Lobo) but that is not the reason why the matter should be referred to the Industrial Court in view of the amount of retrenchment benefits he is entitled to here.

We hold that the Minister had acted in accordance with the law in the instant case. For the reasons stated, we would allow the appeals with costs here and below. The orders of the learned judge are set aside and the decision of the Minister is restored. Deposit to be refunded to the appellants.

Appeals allowed.

Reported by Prof Ahmad Ibrahim